Beachview Care and Rehabilitation Center *and* Local 1115 New Jersey South, SEIU, AFL-CIO. Case 22-CA-22979

April 30, 1999

DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Pursuant to a charge filed on October 19, 1998, the General Counsel of the National Labor Relations Board issued a complaint on January 28, 1999, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain and furnish necessary and relevant information following the Union's certification in Case 22–RC–11505. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); Frontier Hotel, 265 NLRB 343 (1982).) The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 15, 1999, the General Counsel filed a Motion for Summary Judgment. On March 17, 1999, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer the Respondent denies that the Union requested the Respondent to bargain and that it refused to bargain. And, in its response to the Notice to Show Cause, the Respondent attacks the validity of the certification on the basis of its objections to the election in the representation proceeding.¹

The Respondent's assertions that it has not refused to bargain do not present an issue that would require a hearing. The uncontested record evidence establishes that by letter of August 12, 1998, the Union requested bargaining and proposed three alternative dates for negotiations. By responsive letter of August 14, 1998, the Respondent rejected all the dates, asked for other suggestions, but proposed no alternatives of its own. The Union made a second bargaining request on November 6, 1998, and

proposed three more alternative dates. The record shows no response.²

In its brief, the Respondent admits receiving the Union's letters, but does not contend that it has offered or agreed to meet and bargain with the Union since its November 6, 1998 demand. Rather, the Respondent "reiterates each and every [election] objection as well as its request that the Board nullify the election results and order a new election." Under these circumstances, we find that the Respondent is continuing to contest the Union's status and has effectively refused to bargain since November 6, 1998. See *Indeck Energy Services*, 318 NLRB 321 (1995).

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

We also find that there are no issues warranting a hearing with respect to the Union's request for information. As set forth in the General Counsel's complaint and confirmed in the Respondent's brief, in letters dated August 12 and November 6, 1998, the Union requested the Respondent to furnish the following information:

- a. Name, home address, date of hire, job classification, and pay rate for each employee.
- b. Information on all benefit plans currently provided, i.e., health insurance and/or pension plans including benefit booklets or summary plan descriptions.
- c. Employee handbook or information as to the facilities' policies for vacation, holiday, sick leave, leave of absence, etc.
- d. Names of employees enrolled in each insurance category (employee only, employee plus 1 family, etc.) for each Insurance Plan.

¹ The Respondent denied a number of other allegations of the complaint. None of these denials warrants a hearing, as other record evidence establishes the General Counsel's allegations. Thus, the Respondent denied the complaint allegation that on July 28, 1998, the Union was certified by the Board and that it has been the exclusive representative of the employees in the unit. These denials are inconsistent with the record in the underlying representation case of which official notice has been taken. Accordingly, we find that the Respondent's denials raise no issue warranting a hearing. See *Hydro Conduit Corp.*, 242 NLRB 171, 172 fn. 5 (1979).

² Attached to the General Counsel's motion is an affidavit of Chief Union Negotiator Dennis Romano. The General Counsel asserts: "Despite Respondent's denial that it has failed and refused to bargain with the Union, the Union's demands to bargain were effectively denied by Respondent's failure to respond thereto as described in the affidavit of Union representative Dennis Romano [Exh. 11]." In finding that the Union requested bargaining and that the Respondent refused to bargain, we rely on the undisputed documentary evidence discussed above and not on the Romano affidavit.

³ We also reject the Respondent's defense that the Union engaged in dilatory evasive tactics. Even assuming, arguendo, the materiality of such a defense, it is clear that the Union, by its correspondence of August 12 and 20, 1998, made timely bargaining demands and responses to the Respondent's correspondence. The Union's letter of November 6, 1998, is a response to the failure of the Respondent to propose any dates for bargaining.

We find that the Respondent's denial that the Union requested this information does not raise an issue warranting a hearing. The Respondent does not dispute the validity of the Union's letter specifically requested this information. Further, as the information on its face relates to wages, hours, and terms and conditions of employment, it is presumptively relevant and necessary for bargaining. The Respondent's denial of its relevance, without more, does not raise an issue warranting a hearing. See *Verona Dyestuff Division*, 233 NLRB 109, 110 (1977).

Accordingly, we grant the Motion for Summary Judgment and will order the Respondent to bargain and furnish the requested information.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Keansburg, New Jersey, has been engaged in the operation of a nursing home providing in-patient health care services. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations described above, derived gross revenue in excess of \$100,000 and purchased and received at its Keansburg facility goods valued in excess of \$5000 directly from points outside the State of New Jersey.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and has been a health care institution within the meaning of Section 2(14) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held February 18, 1998, the Union was certified on July 28, 1998, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time Licensed Practical Nurses, nurses aides, recreational aides, beauticians, housekeeping employees, dietary employees and laundry employees, employed by the Respondent at its Keansburg, New Jersey facility, but excluding all office clerical employees, Registered Nurses, professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusal to Bargain

Since August 12 and November 6, 1998, by letter, the Union has requested the Respondent to bargain and to furnish information. Since August 12, 1998, the Re-

spondent has failed and refused to furnish information, and since November 6, 1998, the Respondent has failed and refused to bargain. We find that this failure and refusal to respond constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing on and after August 12, 1998, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit and to furnish the Union requested information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement. We also shall order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Beachview Care and Rehabilitation Center, Keansburg, New Jersey, its officers, agents, successors, and assigns, shall

- 1. Cease and desist from
- (a) Refusing to bargain with Local 1115 New Jersey South, SEIU, AFL–CIO, as the exclusive bargaining representative of the employees in the bargaining unit, and refusing to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.
- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
- 2. Take the following affirmative action necessary to effectuate the policies of the Act.
- (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time Licensed Practical Nurses, nurses aides, recreational aides, beauticians, housekeeping employees, dietary employees and laundry employees, employed by the Respondent at its Keansburg, New Jersey facility, but excluding all office clerical employees, Registered Nurses, professional employees, guards and supervisors as defined in the Act.

- (b) Furnish the Union in a timely fashion the information that is relevant in the letters of August 12 and November 6, 1998.
- (c) Within 14 days after service by the Region, post at its facility in Keansburg, New Jersey, copies of the attached notice marked "Appendix." Copies of the notice, on forms provided by the Regional Director for Region 22 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since August 12, 1998.
- (d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, concurring.

I agree that summary judgment should be entered, but not wholly on the basis urged by the General Counsel and adopted by my colleagues.

According to the General Counsel, his allegation of a refusal to bargain rests principally on the affidavit of Union Representative Romano. The General Counsel asserts: "Despite Respondent's denial that it has failed and refused to bargain with the Union, the Union's demands to bargain were effectively denied by Respondent's failure to respond thereto as described in the affidavit of Union representative Dennis Romano [Exh. 11]."

The Respondent has denied refusal to bargain, and the representations made in the affidavit present factual issues that warrant a hearing.

However, I believe that the refusal to bargain need not rest on the affidavit. In this regard, I note that the documentary evidence establishes the refusal to bargain. By letter of August 12, the Union requested bargaining and proposed three alternative dates for bargaining. By responsive letter of August 14, the Respondent rejected all the dates, and proposed no alternatives. The Union made a second bargaining request on November 6, and proposed three more alternative dates. The record shows no response. In these circumstances, and based solely on the documents, I agree that there is a refusal to bargain.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Local 1115 New Jersey South, SEIU, AFL—CIO, as the exclusive representative of the employees in the bargaining unit, and WE WILL NOT refuse to furnish the Union information that is relevant and necessary to its role as the exclusive bargaining representative of the unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time Licensed Practical Nurses, nurses aides, recreational aides, beauticians, housekeeping employees, dietary employees and laundry employees, employed by us at our Keansburg, New Jersey facility, but excluding all office clerical employees, Registered Nurses, professional employees, guards and supervisors as defined in the Act.

WE WILL furnish the Union the information it requested on August 12 and November 6, 1998.

BEACHVIEW CARE AND REHABILITATION CENTER

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."